**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE P.R.RAMAN**
**&**
**THE HONOURABLE MR. JUSTICE ANTONY DOMINIC**

**TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930**

**WA.No. 246 of 2007(E)**
**----------**
**AGAINST THE JUDGEMENT/ORDER IN WPC.20871/2003**
**.....**

**APPELLANT: RESPONDENT IN THE W.P.(C)**
**----------**

**THE ACCOUNTANT GENERAL, OFFICE OF THE ACCOUNTANT GENERAL (A&E), KERALA, THIRUVANANTHAPURAM.**

**BY SPL.GOVT.PLEADER SRI.M.P.PRAKASH**
**GOVERNMENT PLEADER SRI.SANDESH RAJA**

**RESPONDENTS: PETITIONER IN THE W.P.(C)**
**----------**

**SMITHA.C., KANDANGATH, OPP.GOVERNMENT HOSPITAL, KATTOOR, THRISSUR.**

**BY ADV. SRI.JOE JOSEPH KOCHIKUNNEL**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**P.R.RAMAN & ANTONY DOMINIC, JJ.**
**==========**
**W.A NO. 246 OF 2007**
**==========**
**Dated this the 3rd day of April, 2007**

**J U D G M E N T**

**P.R.Raman, J.**

This is an appeal by the State, who is the respondent in the writ petition. The writ petition was filed by the respondent herein for a writ of mandamus to the appellant to release the arrears of Family Pension due to her from the period as prescribed in Ext.P1. The mother of the respondent died while in service on 13/9/98. As per Ext.P1 dated 30/8/89, the appellant admitted an amount of Rs.3,550/- as family pension from 14/9/98 and not from 13/9/98.

2. The only point that arises for consideration in the present writ appeal is as to whether the respondent is entitled for the Family Pension from the date of death of her mother, which is 13/9/98 or whether she will be entitled for such Family Pension only from 16/9/99, the date on which the eligibility certificate was issued. The learned Single Judge following the decision in **Aisha Kunju v. Deputy Director of Education** **(2004(2) KLT 174)**

held that the respondent is also entitled for payment of Family Pension from the date of death of the mother.

3. The learned Government Pleader appearing on behalf of the State would however contend that the said decision on facts will not apply. He also contended that the Family Pension becomes payable to a daughter who completed the age of 25 years only by virtue of Annexure 1 Executive Order and thus the benefit is not a confirmant of any statutory rule. As per the statutory rule, a daughter upto the age of 25 alone will be entitled for Family Pension. However, this benefit was extended to a daughter above the age of 25 years provided certain conditions are satisfied. The condition being that she should be solely dependant on her parents and should not have independent income. She should be an unmarried daughter and the certificate from the concerned authorities shall also be furnished every year to prove that the applicant remains unmarried, along with an affidavit duly certified by Notary Public. Annexure 1 however does not say as to when the Family Pension will become payable to a daughter on completion of 25 years of age. It is the contention of the learned Government pleader that by virtue of Annexure 2 is clarified beyond doubt that in the absence of any

natural eligible heirs like the spouses/minor children, the Family Pension amount will be paid with effect from the date of issuance of the eligibility certificates and will not accrue on the day following the day of death as in the case of spouse/minor children. According to him, when benefit itself is conferred by an Executive Order, necessarily the date on which such amount will become due can also be prescribed by Executive Order and reading Annexure 1 along with Annexure 2, it is clear that in the present case, the respondent will be eligible for payment of Family Pension only w.e.f. 16/9/99, the date on which the eligibility certificate was issued.

4. On the other hand, the learned counsel for the respondent would submit that Annexure 2 itself was issued on 17th February 2000, whereas in the case of petitioner even by Ext.P1 order dated 30/8/99 Family Pension has been sanctioned at the rate of Rs.3,550 and therefore Annexure 2 on the face of it will apply only prospectively and cases already settled will not be reopened under any circumstances. In the case of the petitioner Ext.P1 is issued prior to Annexure A2 and so Annexure A2 has no application.

5. We have heard both sides.

Normally Family Pension will become payable to the dependant on the date of death of the employee. It is true that in the present case, a daughter who completed the age of 25 years will not be normally eligible for Family Pension as per rules. But by virtue of Annexure 1 Executive Order, Family Pension become payable to an unmarried daughter above the age of 25 years on certain conditions. But Annexure 1 is silent regarding the date of eligibility for payment of Family Pension. Only when Annexure 2 is issued, the right is restricted to claim benefit from the date on which the eligibility certificate was issued. Annexure 2 is only prospective. In this case, Ext.P1 has already been issued prior to Annexure 2 and hence even on the face of Annexure 2, the settled matters cannot be reopened and in this view of the matter, the conclusion reached by the learned Single Judge on facts cannot be faulted. We find no merit in this appeal. Dismissed.

**P.R.RAMAN, JUDGE.**

**ANTONY DOMINIC, JUDGE.**

Rp